IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

No. 206 MISC.

Ex Parte JOSEPH COLLETT,
Petitioner.

MOTION FOR LEAVE TO FILE PETITION FOR ORDER TO SHOW CAUSE WHY WRITS OF MANDAMUS AND PROHIBITION SHOULD NOT ISSUE, AND PETITION FOR SAME.

LLOYD T. BAILEY,
325 Thompson Building,
Hot Springs, Arkansas.

MICHAEL H. LYONS,
105 W. Madison Street,
Chicago, Illinois,

THEODORE GRANIK,
1627 K Street,
Washington, D. C.,
Counsel for Petitioner.

Midwest Law Printing Co., 340 W. Huron St., Chicago

The Questions Involved.

Importance.

PAGE

1. Does Section 1404a, Title 28, U. S. C. A., effective September 1, 1948, a general statute, amend and supersede the special venue provision in Section 6 of the "Federal Employers' Liability Act", Title 45, Section 56, U. S. C. A.?

2. Did the court below, erroneously deny plaintiff the right of venue expressly conferred by the Federal Employers' Liability Act?

3. Importance:

   (a) More than 1,350,000 railroad men, not including their families, their widows and orphans, are and are likely to be put in grave and imminent danger of losing substantial rights by having cases transferred to venues not of their choice.

   (b) A vast number of cases brought under the F. E. L. A. are being, and will be transferred by district judges, leaving the injured, widows and orphans, without relief as to their venue, unless it be by extraordinary proceedings such as this.

   (c) Unless the court accepts this petition, this plaintiff, and a vast number of other plaintiffs, will be compelled to petition, and be involved in litigation in two U. S. courts of appeal. Eventually, this court will be called upon to decide the question.

Motion:

INDEX OF CASES CITED.

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MOTION FOR LEAVE TO FILE PETITION FOR ORDER TO SHOW CAUSE WHY WRITS OF MANDAMUS AND PROHIBITION SHOULD NOT ISSUE, AND PETITION FOR SAME.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner in the above entitled matter respectfully moves the court for leave to file the attached petition for an order direct to the United States District Court for the Eastern District of Illinois, and directed to the Honorable Fred L. Wham, United States District Judge for the Eastern District of Illinois, East St. Louis, Illinois, to show cause why a writ of mandamus should

not issue from this court directing the said court and judge to vacate and expunge from the records of said court, certain orders made and entered in the case of *Joseph Collett, plaintiff* v. *Louisville and Nashville Railroad Co., defendant,* No. 1532, in said district, (wherein it was stipulated for the record that both plaintiff and defendant were subject to and working under the provisions of the Federal Employers' Liability Act at the time of the injuries); and for an order directed to the United States District Court for the Eastern District of Kentucky, and directed to the Honorable H. Church Ford, United States District Judge for the Eastern District of Kentucky, to show cause why a writ of prohibition should not issue from this court directing said court and judge to stay all proceedings in said cause and for an order to re-transfer said cause to the United States District Court for the Eastern District of Illinois, being cause No. 59 in said District Court.

The order of the District Court for the Eastern District of Illinois, transferring said cause to the Eastern District of Kentucky, was entered upon the hypothesis that Section 1404a, Title 28, U. S. C. A., effective September 1, 1948, amended, repealed and superceded Section 6, of the Federal Employers' Liability Act, Section 56, Title 45, U. S. C. A., and therefore said order, as petitioner believes, is void.

Your petitioner would therefore respectfully represent to this court that as he believes, the interlocutory order entered transferring said cause was not appealable, and that before an ordinary appeal could be taken to this court, petitioner's case would necessarily have been tried in a venue not of his selection, (in the City of Richmond, Kentucky, a farming community, with a population of

7,335), instead of in a metropolitan area, (in the City of East St. Louis, Illinois, having a population of 74,024), would have lost substantial rights and an appeal would be without point; that plaintiff's only remedy is by this or some such extraordinary proceeding.

Petitioner respectfully prays leave to file the attached petition and for all just, right and proper relief.

Joseph Collett,
Petitioner.

Lloyd T. Bailey,
325 Thompson-Building,
Hot Springs, Arkansas.

Michael H. Lyons,
105 W. Madison Street,
Chicago, Illinois.

Theodore Granik,
1627 K Street,
Washington, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

No.

Ex Parte JOSEPH COLLETT,
Petitioner.

PETITION FOR ORDER TO SHOW CAUSE WHY WRITS OF MANDAMUS AND OF PROHIBITION SHOULD NOT ISSUE, AND MEMORANDUM IN SUPPORT THEREOF.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

PRELIMINARY STATEMENT

This petition is respectfully submitted for the purpose of enabling the court to pass upon the conflict in jurisdiction and venue now existing as a result of the action of the District Court for the Eastern District of Illinois, sitting at East St. Louis, Illinois, ordering plaintiff's case transferred from the Eastern District of Illinois to the Eastern District of Kentucky. The lower court based its authority for the order of transfer on the hypothesis that Section 6 of the "Federal Employers' Liability Act," (Section 56, Title 45, U. S. C. A.) was repealed or amended by the enactment of Section 1404a (Chapter

87, Title 28, U. S. C. A.), of the new Federal Judicial Code.

This Court Has Power to Issue All Necessary Writs in Aid of Its Appellate Jurisdiction.

The Supreme Court is empowered, by Section 262 of the Judicial Code (28 U. S. C. A. 377) and after September 1, 1948 by Title 28, U. S. Code, Section 1651; to issue all writs necessary or appropriate in aid of its appellate jurisdiction agreeable to the usages and principles of law.

The supervisory power of this Court under this statute over a district judge was affirmed in *Ex Parte Republic of Peru*, 318 U. S. 578, where the Court pointed out that the writs afford an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction.

To the same effect see also *Scripps-Howard Radio, Inc. v. Federal Communications Commission*, 316 U. S. 4; *In Re National Labor Relations Board*, 304 U. S. 486.

SUMMARY OF FACTS.

The plaintiff, who is 36 years old, married, and the father of four minor children, was injured on May 30, 1947, while employed by the defendant as a car oiler, or inspector's helper, at about 5:30 A. M., when he was caused to lose his balance and fall under a moving train he was about to assist in inspecting, due to the alleged negligence of defendant in failing to furnish plaintiff a reasonably safe place in which to work.

Both legs were amputated close to his body. It was stipulated for the trial that plaintiff could never wear

artificial limbs and that both the plaintiff and defendant were employed in interstate commerce, at the time of the injury.

Both plaintiff and his wife are illiterate, neither being able to read nor write beyond the signing of their names. On July 28, 1947, two days after plaintiff left the hospital, defendant paid him $8,000.00, and took a release from him in full settlement of his claim.

On September 2, 1947, plaintiff employed counsel, who filed suit for him in October, 1947, in the District Court for the Eastern District of Illinois (sitting at East St. Louis, Illinois) alleging among other things, fraudulent procurement of the release.

East St. Louis, Illinois, is situated on one of the main lines of the defendant's railroad and is 428 miles distant from Irvine, Kentucky, where the accident occurred, and where plaintiff lives. The case was set for trial on February 16, 1948, but was adjourned to the May term due to the plaintiff's illness. At the May term, the case was set for trial on November 1, 1948. In the interim, the court ordered plaintiff to tender to the defendant railroad the $8,000.00, he had received in settlement, on penalty of dismissal of his case. The tender was made although plaintiff was compelled to borrow more than 50 per cent of the money.

On September 22, 1948 defendant filed its "Motion for Change of Venue," asking that the case be transferred to the Eastern District of Kentucky, by virtue of Section 1404a, Chapter 87 of Title 28 U. S. C. A. effective September 1, 1948. On October 18, 1948 the court granted defendant's motion and transferred the case to the Eastern District of Kentucky to which action the plaintiff

reserved an exception, and this petition is brought for the purpose of setting aside and revoking that order.

Plaintiff brought this action under the provisions of the "Federal Employers' Liability Act," Title 45, Sections 51-60.

Effective September 1, 1948, Title 28 of the United States Code (Judiciary and Judicial Procedure) was recodified and revised, and Section 1404, Subdivision (a) of this revision provides as follows:

"'§1404. Change of Venue.

(a) For the convenience of parties and witnesses, in the interest of justice, a District Court may transfer any civil action to any other district or division where it might have been brought."

The lower court based its authority for the transfer of petitioner's case upon the quoted section of the Revised Code (see Appendix, page 23) and on the theory that said section superseded Section 6, the specific venue provision, of the Federal Employers' Liability Act. This petition is submitted generally in opposition to that theory, and in support of the contention that said section has no application to actions brought under the Federal Employers' Liability Act.

Wherefore, petitioner prays for the issuance of a writ of mandamus to the District Court for the Eastern District of Illinois, directing that it revoke and expunge from the record, its order of October 18, 1948, transferring said cause to the Eastern District of Kentucky, and for a writ of prohibition to the District Court for the Eastern District of Kentucky, preventing it from proceeding with

the trial of said cause on the grounds that it is without jurisdiction over said action.

Respectfully submitted,

Joseph Collett,

Petitioner.

Lloyd T. Bailey,
Michael H. Lyons,
Theodore Granik,
Counsel for Petitioner.

State of Illinois)
County of Cook)

Affidavit.

I hereby certify that on this 9th day of November, 1948, before me, Madeline B. Dworzak, a notary public, duly commissioned and qualified for the State of Illinois and County of Cook, personally appeared Lloyd T. Bailey, one of the attorneys for the petitioner herein, and made oath in due form of law that he is authorized to make this affidavit on behalf of the petitioner and that the facts entered in the foregoing petition are true in substance and in fact as he verily believes.

Witness my hand and notarial seal the day and year first above written.

Madeline B. Dworzak,
Notary Public.

(SEAL)

MEMORANDUM IN AID OF PETITION.

We feel that it is of the utmost importance that petitioner's motion be allowed.

Many cases brought under the Federal Employers' Liability Act have already been transferred by various judges of the district courts and many petitions for transfer are now pending in such courts; thus hundreds of men injured in railroad accidents, their widows and orphans, are put in grave and imminent danger of losing substantial rights by having their cases transferred to venues other than their choice. These unfortunates are wholly without remedy, unless it be by extraordinary means.

Unless this court, which will eventually be called upon to decide the question, in the exercise of its discretion, allows plaintiff's motion, or some such motion, the injured railroad men or their families are faced with the necessity of petitions for mandamus and prohibition in two United States courts of appeal with attending delay, expense and the possibility of conflicting decisions.

Section 6 of the Federal Employers' Liability Act Confers Substantive Rights to Railroad Men Injured While Working in Interstate Commerce By Railroad.

Under Section 6 of the act of Congress of April 5, 1910, as amended, (45 U. S. C. A., § 56), a special venue provision for Federal Employers' Liability Act cases is provided, reading as follows:

> "Under this chapter, an action may be brought in the District Court of the United States, in the district of the residence of the defendant, or in which

> the cause of action arose, or in which the defendant shall be doing business at the time of the commencement of action."

After 38 years of extensive litigation in both Federal and State Courts, a contemporary interpretation of this section has been accomplished under which the courts now uniformly recognize that the section gave to the employees a definite, valuable substantive right.

In *Baltimore & Ohio R. Co.* v. *Kepner* (1941), 62 S. Ct. 6, 314, U. S. 44, 86 L. Ed. 28, the Supreme Court considered the special venue statute of the Federal Employers' Liability Act and held that Section 6, (Title 45, U. S. C. A. 56), established the venue for the action in the federal courts, stating on page 33, 86 L. Ed.:

> "When the section was enacted, it filled the entire field of venue in Federal Courts. A privilege of venue granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense. If it is deemed unjust, the remedy is legislative, a course followed in securing the amendment of April 5, 1910, for the benefit of employees."

In *Miles* v. *Illinois Central R. R. Co.*, 315 U. S. 698 (1942), the selection of the forum by the representatives of the injured employee was a state court and an injunction was issued against the maintenance of the suit on the grounds of *forum non conveniens* and although the State Court had established authority for enjoining oppressive litigation, the majority opinion made it clear that the act of the Congress, (Section 6 of the Federal Employers' Liability Act), at page 705 is:

> "A determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable."

In this case, therefore, we see both substantive and adjective statute authorizing an interference with the selection of venue under the F. E. L. A., and yet the Supreme Court clearly says that the venue provision of the act has the same effect as a pre-determination, that selection of forum can never be inequitable and unconscionable.

As a General Statute, the Code Revision Cannot Supersede the Specific Statutory Venue Enactment of the Federal Employers' Liability Act.

The presumptions of statutory construction support the proposition that Section 1404(a), as part of a codification or statutory revision, does not supersede Section 6 of the Federal Employers' Liability Act, a special statutory enactment as interpreted by the courts.

It is an elementary tenet in reconciling such general codifications with pre-existing special statutes, not only that the general provisions, without express words of repeal, do not effect the previous special act, but that if the terms of the general act are broad enough to include the cases embraced in the special or local act the general act is to be construed as to have no application or effect upon the special act. In such case the special act is to be deemed an exception to the general act. See

U. S. Alkali Export Association v. *United States*, 325 U. S. 196 (1945), and cases cited.

In *Washington* v. *Miller*, 235 U. S. 422 (1914), a statutory situation of substantially identical nature was presented to the Supreme Court. The suit there involved title to land claimed by opposing claimants, each alleging heirship to a deceased Creek Indian. The conflict arose by reason of a difference in the laws of descent

and distribution of the Creek nation and the State of Arkansas. Special statutes had been enacted in 1902 making Creek distribution applicable, but in 1904 an Act was passed as follows:

> "All the laws of Arkansas heretofore put in force in the Indian territory are hereby continued and extended in their operation so as to embrace all persons and estates in said territory, whether Indian, freedmen or otherwise."

There was no repealing clause of the previous Act. Clearly, if this statute was read literally, it would subject the Creek laws to the Arkansas laws of descent and distribution. The court pointed out (page 428) that such a result would only be by reason of the generality of its terms for it made no mention of that law. The court said:

> "In these circumstances we think there was no implied repeal and, for these reasons, first, such repeals are not favored, and usually occur only where there is such an irreconcilable conflict between an earlier and a later statute that effect reasonably cannot be given to both (citing cases); second, where there are two statutes upon the same subject the earlier being special and the later general, the presumption is, in the absence of an express repeal or an absolute incompatability, that the special is intended to remain in force as an exception to the general (*Townsend* v. *Little*, 109 U. S. 504, 512; *Ex parte Crow Dog*, Id. 556, 570; *Rodgers* v. *Texas*, 185 U. S. 83, 87-89); and, third, there was in this instance no irreconcilable conflict or absolute incompatability for both statutes could be given reasonable operation if the presumption just named were recognized."

We would like to call the court's attention to a recent case decided by this court June 7, 1948, *United States* v. *National City Lines*, 92 L. Ed. 1115, in which this court

had under consideration the special venue provision of the Clayton Anti-Trust Act, a venue statute similar to the one found in Section 6, of the Federal Employers' Liability Act. This court held that the doctrine of forum non conveniens was not applicable because of the special venue section of the act.

Section 39 of Chapter 647, Public Law 773, which was the actual law enacting Title 28, reads as follows in pertinency:

> "The sections or parts thereof of the * * * revised statutes of the United States or statutes at large enumerated in the following schedule are hereby repealed * * *."

There then follows approximately 23 pages representing the schedule of laws repealed. Section 6 of the Federal Employers' Liability Act was not repealed, so that there is clearly not the necessary, definite expressed intention to supersede or repeal the special statute required by the elementary rules of construction referred to.

Where the legislature did intend to make Section 1404(a) applicable to other special statutes containing their own venue provisions, it did so in a clear and unmistakable manner. For example, in order to make it clear that the transfer procedure was to apply to copyright cases Section 111 of Title 17, which established venue for copyright actions, was specifically repealed. The repealer is found in the statutes referred to and the venue provision is then restated right in the revision of Title 28 as Section 1400(a) in the chapter denominated "Chapter 87—District Courts; Venue".

In Title 40 was found Section 257, which was the venue provision for condemnation proceedings. The venue provision was specifically repealed, the section appears in

the list of statutes repealed above referred to, and the venue provision became Section 1403, again a part of Chapter 87, referring to venue in district courts.

And so we find assembled in that chapter the venue provisions for banking association actions (28 U. S. C. A. 1394), the venue provisions for recovering fines, penalties and forfeitures (1395), the venue provision for recovering Internal Revenue taxes (1396), the venue provision covering interpleader (1397), the venue provision covering enforcement of Interstate Commerce Commission orders (1398), the venue provisions covering partition actions involving the United States (1399), the venue provision covering stockholders derivative actions (1401), and the venue provision covering actions against the United States under the Tort Claims Act (1402).

These then (the venue provisions re-enacted in Chapter 87) are all of the civil actions which the court may transfer for the convenience of parties and witnesses, as authorized by Section 1404(a).

The omissions are significant. Beside the omission of the venue provision of the Federal Employers' Liability Act, it will be observed that the special venue provisions of the Sherman Anti-Trust Act and of the Jones Act are excluded. They were not overlooked.

It is almost self-evident that in the case of the Jones Act (46 U. S. C. A. 688), the Anti-Trust Laws (15 U. S. C. A. 1 to 7) and the Federal Employers' Liability Act there were reasons of substance for not including these venue provisions.

There is ample external evidence to support the contention that the inclusion or absence of the venue provisions of other Acts in the list of statutes repealed and

their reenactment in Chapter 87 of Title 28, is the criterion for determining whether Section 1404(a) is or is not to apply to such venue choice. In House Report No. 308 of the 80th Congress, First Session, which accompanied H.R. 3214, it was said:

> "Sections 35 and 36* (which contained the schedule of laws repealed) provided for the specific repeal of all laws incorporated in the revision and other superseded and obsolete provisions relating to the courts. The schedule was carefully checked and rechecked many times. *This method of specific repeal will relieve the courts of the burdensome task of ferreting out implied repeals.*" (Italics ours.)

Furthermore, when amendments of sections in other titles were indicated to conform with the provisions of the revision, these amendments were set forth in Sections 3 to 31 of the law and in the same report it was said:

> "Sections 3 to 31 are amendments of sections in titles other than Title 28 which will make such sections *conform* with provisions of this revision."

It would seem to follow that where a section or provision, such as that with respect to venue in 45 U. S. C. A. 56, is not amended it was not intended that that section or provision should "conform" with the provisions of the revision.

As will be hereafter observed, Title 28 was represented as a codification containing nothing of a controversial nature. If the United States Attorney believed that a civil action brought pursuant to the Sherman Anti-Trust Act could be transferred at the instance of a defendant to another district, subject to prosecution by a different office of the United States Attorney than that in which his action had been commenced, strenuous objections

* Section 39 now provides for repeals. See Senate Report No. 1559.

would have been made. It would have been indeed the subject of the greatest controversy had the revision been drafted so as to repeal and re-enact the venue provisions of the Jones Act and the Federal Employers' Liability Act in Chapter 87, thereby making actions brought pursuant to these two statutes transferable to other districts, and this was a fact that was very well known to the committee of the House and Senate and the revisers having the stewardship of the revision.

There is ample authority for limiting 1404(a) to the venue situations set forth in Chapter 87.

The *Matter of Hohorst*, 150 U. S. 653 (1893), which construed the predecessor to the general venue provision in Title 28, is authority for the proposition that general venue provisions are inapplicable to specific situations unless specifically covered, and there it was held that a foreign corporation could be sued in any district where it might be found despite the distinct inhibitions of the then venue statute limiting suits to the district of residence of either the plaintiff or the defendant.

The legislation covering the rights and liabilities between railroads and their employees for personal injury has been systematically revised, restated and strengthened through the years, and the courts have consistently found in this legislation the intention to bestow special advantages in matters of venue upon injured railroad employees and have given to the Acts and amendments an interpretation designed to carry out its humanitarian objectives. An intention to depart from that policy thus declared and so deliberately settled for nearly 40 years is not to be assumed on any casual basis, and certainly not when the process requires a disregard of one of the most elementary and best established principles of statutory construction.

Congress Did Not Intend to Repeal the General Venue Section of the Federal Employers' Liability Act by Enactment of Section 1404a of Title 28, U. S. C. A.

When the revision was finally completed it was presented to both the House and Senate via the consent calendar, rules were suspended and the Bill passed practically without opposition. With this background in mind, the comments of Senator Donnell of Missouri, who presented the Bill to the Senate, are of importance in ascertaining both the knowledge which the Senators had at the time they voted on this Bill and their intent in voting for it. The Senate floor discussion which took place on June 12, 1948 is in 94 Congressional Record 8108-8111 and is also reported beginning at page 2019 of the supplement to Title 28. Senator Hatch asked for a brief explanation of the Bill and Senator Donnell of the Senate Judiciary Committee stated that its purpose was to "codify and revise the laws relating to the federal judiciary and judicial procedure". Thereafter, Senator Robertson of Virginia said:

> "The Bill presents this codification as a thoroughly expert *codification of existing law; does it not?*"

Senator Donnell said, in reply:

> "The purpose of this Bill is primarily to revise and codify and to enact into positive law with such corrections as were deemed by the Committee to be of substantial and *non-controversial nature.*" (Supplement, page 2020.) (Italics ours.)

The court will note that the Act was represented to the Senate as containing corrections of a noncontroversial nature.

Charles J. Zinn, Esq., was counsel for the House Committee on Revision of the Laws. A hearing was held before Sub-Committee No. 1 of the House Judiciary Com-

mittee on the revision on March 7, 1947. Mr. Zinn said (page 1981):

> "People who are afraid that we are changing the law to a great extent need not worry particularly about it."

Congressman Keogh, who was Chairman of the Committee which originally had charge of the Bill, said at this same hearing before the Sub-Committee:

> "The policy that we adopted, which in my mind has been very carefully followed by the revisers and by the staffs of the publishing companies, as well as the employees of the committee, was to avoid wherever possible and whenever possible the adoption in our revision of what might be described as *controversial substantive changes of law.*" (p. 1945 of Title 28 Supplement)
>
> "Mr. Chadwick: Mr. Keogh, I gathered from the very able presentation of the background of your approach that it is probably undesirable at this time for us to consider changes of the substantive laws that either are or might become controversial. This is not the time for that particular type of contribution. Am I correct?
>
> Mr. Keogh: You are correct. * * * But, further, we proceeded upon the hypothesis that since that was primarily a restatement of existing law, we should not endanger its accomplishment by the inclusion in the work of any highly controversial changes in the law."
>
> "Mr. Robsion: And this bill does not include controversial matters?
>
> Mr. Keogh: We have sought to avoid as far as possible, Mr. Chairman, any substantive changes that did not meet with unanimity of opinion." (P. 1950 of Title 28 Supplement.)
>
> (Congressman Chadwick did not vote on, and Congressman Keogh voted against, the Jennings Bill; Cong. Rec., 80th Cong., 1st Sess., Vol. 93, No. 137, P. 9369, July 17, 1947.)

Members of Congress would not read a bill as lengthy and extensive as this one. They would rely upon the assurance that it contained no controversial matters. At the same Hearing these remarks were made:

By Congressman Robsion, Chairman.

> "So the important thing that this committee is trying to accomplish is to develop such a table so that the Members of Congress will feel that what we present to them is as nearly correct as work of this kind can be made correct, *because you can never reach a time when the Members of Congress will read a bill like that* and then turn to all the hundred and hundreds of references, the various statutes, to see whether they are correct, or have been repealed, * * *" (P. 1941, Title 28 Supplement.)

(Congressman Robsion voted against the Jennings Bill; Congressional Record, *supra.*)

In a communication, made part of the record of the Committee Hearing, Circuit Judge Sanborn stated:

> "Any departures from the strict letter of existing statutes have been carefully noted by the revisers, and *represent improvements of a non-controversial character.*" (P. 1972, Title 28, Supplement.)

The Senate Report has well emphasized the non-controversial nature of the revision. In Senate Report 1559, 80th Congress, Second Session, which accompanied the Bill, it was said (page 1676 of Supplement to Title 28):

> "Many *non-controversial* improvements have been affected which, while individually small in themselves, add up to a very substantial improvement in and *modernization of the law relating to the federal judiciary. At the same time great care has been exercised to make no changes in the existing law which would not meet with substantially unanimous approval.*" (Italics ours.)

Counsel does not subscribe for a single moment to the proposition that the revisers, Mr. Zinn, Congressman

Keogh, Congressman Chadwick, Congressman Robsion, Congressman Devitt, Circuit Judge Sanborn and Senator Donnell were attempting to mislead Congress as to the intent, purpose or effect of the revision. Their statements rather make it conclusive that 1404(a) of the revision was not intended to deprive the injured workman of his right to select and try his case in a forum of his choice.

Concurrent History of Congressional Action on the Jennings Bill.

The court will note that certain references have been made to the effect that Congressman Keogh and others, who endorsed the re-codification of Title 28, voted against the Jennings Bill. The Jennings Bill has been one of the highly controversial items on the legislative agenda of the last two sessions of Congress. In the Jennings Bill and various amendments offered from time to time, the proposal was to limit the choice of venue in actions against the railroads to more geographically restricted locations. Basically, this controversy has raged because it involved immeasurable sums of money to both the railroads and their injured employees.

The significant feature which underwrites the contention that 1404(a) of the revision was not intended to have application to Federal Employers' Liability Act cases is that these hearings were conducted under the auspices of the same Judiciary Committees in the same House, with the same personnel, at the same session of the House of Representatives; that the legislation was of the most highly controversial and inflammable nature; that it was never enacted into law, that in the debate on H. R. 1639 a minority report of the Judiciary Committee (Report 613, Part 2, 80th Congress, First Session, 1947) which

would have made the doctrine of *forum non conveniens* applicable to Federal Employers' Liability Act cases, was proposed and defeated. First Jennings Bill—H. R. 242, 79th Cong. (1947) Second Bill—H. R. 635, 79th Cong., 2nd Sess. Third Bill—H. R. 1639, 80th Cong. 1st Sess. (1947) 34 American Bar Association Journal, 341 (April 1948) 56 Yale Law Journal 1234.

CONCLUSION.

It is respectfully submitted that aside from the presumptions of statutory construction there is clear evidence of a statutory and congressional intention not to disturb those special rights and privileges found and reiterated by the Supreme Court to have been created by the Federal Employers' Liability Act from their special repository in Section 56 of Title 45 U. S. C. A.

Respectfully submitted,

LLOYD T. BAILEY,
325 Thompson Building,
Hot Springs, Arkansas.

MICHAEL H. LYONS,
105 W. Madison Street,
Chicago, Illinois.

THEODORE GRANIK,
1627 K Street,
Washington, D. C.,
Counsel for Petitioner.

APPENDIX.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Illinois

JOSEPH COLLETT,
Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation,
Defendant.

Filed Oct. 18, 1948
D. H. Reed, Clerk

Civil—No. 1532

ORDER:

This case is pending before this Court, with the issues fully settled and having been set for trial. It is a case arising under the Federal Employers' Liability Act. Subsequent to the effective date, September 1, 1948, of the new Title 28, U. S. Code Judiciary and Judicial Procedure, which Act is entitled "An Act to Revise, Codify and Enact into Law Title 28 of the U. S. Code entitled Judicial Code and Judiciary, adopted June 25, 1948 and effective September 1, 1948, defendant filed in this cause its Motion entitled "Motion for Change of Venue" supported by Affidavits, asking this Court, in the exercise of its judicial discretion, for the convenience of the parties and witnesses, and in the interest of justice, to transfer this cause to the United States District Court for the Eastern District of Kentucky sitting either at Lexington or at Richmond, Kentucky.

Issues have been joined on said Motion on the part of the plaintiff by the filing of briefs and counter affidavits. The matter has been fully argued and is submitted to the Court for decision.

The record before the Court on this motion discloses that all of the witnesses in this case, including the plaintiff himself, reside at Irvine, Kentucky, which is twenty-six miles from Richmond and forty-eight miles from Lexington, Kentucky. The trial of the case will take approximately four days, and it is anticipated that approximately thirty-five witnesses will be used at the trial. Irvine, Kentucky is four hundred and twenty miles from East St. Louis, Illinois, where this case is set for trial, and journey by public transportation will require approximately twenty-four hours. The issue in the case, besides that of liability under the Federal Employers' Liability Act, also involves the validity of a release execute by plaintiff for a valuable consideration, which release has been attacked on the ground of fraud in the indictment.

The accident occurred in or near Irvine, Kentucky. The Louisville and Nashville Railroad Company is amenable to process in Richmond, Kentucky or in Lexington, Kentucky.

Defendant's Motion, which is really a Motion for the Transfer of the cause rather than a Motion for Change of Venue, is based upon Section 1404a of the Act above referred to. This section reads:

> "For the convenience of parties and witnesses, in the interest of justice, a District Court may transfer any civil action to any other District or Division where it might have been brought."

There is nothing in the Act which restricts the application of this language. There is nothing in the legislative history of the Employers' Liability Act or of this Act which excludes application of it to a Federal Employers' case. The legislative history both of the Federal Employers' Act and of this Act to the contrary indicates that the purpose of the passage of this Act was to enable the trial court to transfer the cause if in the interest of justice and for the convenience of parties and witnesses the exercise of judicial discretion so requires.

The fact that this case was instituted prior to the effective date of the Act is of no consequence. The Act effects only a matter of procedure, and there is no vested right in a matter of procedure. The fact that the case has been set for trial is of no consequence, in view of the fact that counsel for the defendant have stated in open court that they will co-operate in a setting of this case at the November Term 1948, either at Lexington or at Richmond, Kentucky. It appears from the record that the next calendar of jury cases at Richmond will be made up on November 8th, and that the next calendar of jury cases at Lexington will be in the month of January, 1949. Furthermore, the case would have been disposed of by this Court at the May Term, 1948 if plaintiff had not resisted defendant's motion to require him to make a tender of the consideration paid for the release.

The language of Section 1404a is unambiguous, direct, clear and by the language used in the history thereof, indicates that all civil actions are embraced within its scope, and nothing has been advanced by plaintiff in contradiction to the claim of defendant that it is to the convenience of the parties and the witnesses that the cause be transferred.

In view of the foregoing record exercise of sound judicial discretion requires that this cause be transferred for trial to the Eastern District of Kentucky, at Lexington, Kentucky.

It is therefore Ordered that this cause be and is hereby transferred to the United States District Court for the Eastern District of Kentucky, at Lexington, Kentucky, and that the Clerk of this Court shall forthwith forward all of the files in this proceeding to the Clerk of said District at Lexington, Kentucky, together with a copy of this order.

It Is Further Ordered that the Clerk of this Court forward to the Clerk of the District Court at Lexington, Bank Draft No. 293 of the Winchester Bank of Winchester, Kentucky, dated July 12, 1948, payable to the Louisville and Nashville Railroad Company, in the amount of $8,000.00, deposited with the Clerk of this Court as a tender to the defendant of the consideration paid for the release in accordance with the terms of an order of this Court theretofore entered thereon.

Exception is allowed to the plaintiff.

Dated at East St. Louis, Illinois, this 18th day of October, A. D. 1948.

By the Court.

(Signed) Fred L. Wham,
Judge.

Endorsed: No. 1532 Joseph Collett, Plaintiff v. Louisville & Nashville Railroad Company, Defendant. Order Transferring Cause. Harold Baltz, Otis E. Guynon, Attorneys for Defendant, 25 First National Bank Bldg., Belleville, Illinois.